

EXECUTIVE OFFICER SUMMARY REPORT
September 14, 2005

ITEM: 9

SUBJECT: Settlement of Liability Against JRMC Real Estate, Inc. and the City of Escondido for Violations of Water Code Section 13376, SWRCB Order No. 99-08-DWQ, *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity, Escondido Research & Technology Center, Escondido, San Diego County* (WDID No. 9 37S320081), and Order No. 2001-01, *Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District*. (Tentative Order No. R9-2005-0237) (Frank Melbourn)

PURPOSE: The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability (ACL) Complaint Nos. R9-2005-0059 and R9-2005-0097. If the Regional Board decides to reject the combined settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liabilities.

PUBLIC NOTICE: A notice of a 30-day public comment period on the proposed settlement of ACL Complaint Nos. R9-2005-0059 and R9-2005-0097 was published in the North County Times on August 12, 2005 (Document No. 3). The settlement offer is also posted on the Regional Board website and was provided to members of the public that had expressed interest in this matter.

DISCUSSION: On March 10, 2005, the Executive Officer issued individual ACL Complaint No. R9-2005-0059 to JRMC Real Estate, Inc. (hereinafter JRMC, Document No. 4) and No. R9-2005-0097 to the City of Escondido (hereinafter City, Document No. 5), recommending the assessment of civil liability in the amount of \$1,260,600 and \$129,000, respectively, for violations cited at the Escondido Research and Technology Center (ERTC) project.

The ACL Complaint against JRMC alleged the following violations:

1. Failure to prohibit discharges of sediment directly or indirectly via City's Municipal Separate Storm Sewer System

(MS4) into Escondido Creek on at least 82 days;

2. Failure to implement a Storm Water Pollution Prevention Plan (SWPPP) by failing to implement and/or maintain Best Management Practices (BMPs) for 166 days.
3. Failure to monitor storm water runoff from the site on at least 16 days;
4. Failure to assess BMPs after storm events on at least 16 days; and
5. Failure to submit status reports on at least 16 days.

The ACL Complaint against the City alleged the City failed to implement, or require JRMC to implement BMPs to ensure the pollutant discharges from JRMC's construction activity into City's MS4 was reduced to the Maximum Extent Practicable (MEP) performance standard in violation of Order No. 2001-01 on at least 430 days.

On several occasions, the Regional Board met with the JRMC and City (collectively referred to as Dischargers) to discuss the allegations of the ACL Complaints. Following the issuance of Complaint, JRMC revised the SWPPP for ERTC, and promised to: (1) implement a revised SWPPP including the design, installation and maintenance of compliant sediment basins; (2) fully landscape and irrigate all exterior slopes fifteen feet in length or greater; (3) treat collected storm water runoff as necessary with an advanced treatment system; (4) mitigate any identified permanent impacts caused by discharges from ERTC to Escondido Creek; and (5) stay in compliance with Order No. 99-08-DWQ at all current and future construction sites.

The City has stated that it will exercise its regulatory jurisdiction over construction projects to ensure that it reduces the discharge of pollutants from developments to the MS4 to the MEP.

The Regional Board received a written settlement offer from the Dischargers on August 15, 2005 that was modified on August 17, 2005. The tentatively agreed upon settlement offer consists of the following:

JRMC

Payment of \$200,000 to the State Water Resources Control Board's Cleanup and Abatement Account and \$200,000 for a Supplemental Environmental Project (SEP) to improve water quality within the Escondido watershed. The remaining \$800,000

of the liability will be suspended if, by October 10, 2005, JRMC attains full compliance with the storm water construction permit at ERTC properties owned or controlled by JRMC and mitigates any identified permanent impacts caused by discharges from ERTC to Escondido Creek.

City of Escondido

Payment of \$25,000 to the State Water Resources Control Board's Cleanup and Abatement Account and \$25,000 for a SEP acceptable to the Regional Board. The City also proposes to conduct a "root cause" analysis to identify those factors that resulted in City's failure to implement, or require JRMC to implement, BMPs during the violation period, and submit a corrective action plan addressing any identified factors that resulted in the City's failure to implement, or require JRMC to implement, BMPs during the violation period.

The Regional Board has identified several SEPs within the watershed where ERTC is located that would be acceptable to the Regional Board.

Tentative Order No. R9-2005-00237 would establish only the total amount of the liability and the appropriateness of a SEP, but does not identify a specific project. The Regional Board will consider approval of one or more recommended SEPs at a subsequent Board meeting. This will provide the Regional Board additional time to review SEP applications and not delay the consideration of the settlement.

JRMC and City may propose alternative SEPs within the watershed where ERTC is located, provided that the proposed alternative SEPs satisfy the SEP criteria developed by the State Water Resources Control Board and Regional Board. The Regional Board is not obligated to accept or approve alternative SEPs proposed by Dischargers. If JRMC and/or the City does not elect to fund SEPs previously determined to be acceptable by the Regional Board and does not develop an acceptable proposal for alternatives worth up to \$225,000 by December 14, 2005, then the total liability shall be paid to the State Water Resources Control Board's Cleanup and Abatement Account.

On July 22, 2005 the Regional Board inspected the ERTC site and found no serious violations of the State Board's Construction Storm Water Permit. Additional work will need to be done at the site to prepare the site for the upcoming wet season.

Dischargers' settlement offer has the following positive aspects:

1. Dischargers waive right to petition the State Board on this matter;
2. Failure of JRMC to be in substantial conformance with the Construction Storm Water Permit by October 3, 2005 at the ERTC site will result in the revocation of suspension of \$800,000 of the liability;
3. The settlement includes payment of a liability that is sufficient enough to deter Dischargers, and other dischargers from non-compliance;
4. Ability to select and fund a Supplemental Environmental Project (SEP) at a later Regional Board meeting;
5. The settlement is consistent with the State Board's Water Quality Enforcement Policy; and
6. Settlement allows the Regional Board to redirect formal enforcement resources to other high priority violations.

KEY ISSUES: None.

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

1. Location Map
2. Tentative Order No. R9-2005-0237
3. North County Times Notice
4. ACL Complaint R9-2005-0059
5. ACL Complaint R9-2005-0097

RECOMMENDATION(S): Adoption of tentative Order No. R9-2005-0237 is recommended.